

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WELLS FARGO BANK, N.A., AS TRUSTEE :
FOR THE REGISTERED HOLDERS OF :
CREDIT SUISSE FIRST BOSTON MORTGAGE :
SECURITIES CORP., COMMERCIAL :
MORTGAGE PASS-THROUGH :
CERTIFICATES, SERIES 2005-C2, BY AND :
THROUGH ITS SPECIAL SERVICER, :
CWCAPITAL ASSET MANAGEMENT LLC, : Case No.: 16-cv-09112 (LGS)
:
Plaintiff, :
:
v. :
:
390 PARK AVENUE ASSOCIATES, LLC; ABY :
J. ROSEN; MICHAEL FUCHS; HARRY LIS; :
SELL-MAR ENTERPRISE INC.; GOTHAM :
LIGHTING SUPPLY; A-VAL :
ARCHITECTURAL METAL III LLC; STATE :
OF NEW YORK DEPARTMENT OF :
TAXATION AND FINANCE; NEW YORK :
CITY DEPARTMENT OF FINANCE; NEW :
YORK CITY CRIMINAL COURT; NEW YORK :
CITY ENVIRONMENTAL CONTROL BOARD; :
NEW YORK CITY WATER BOARD; "JOHN :
DOE"; "MARY ROE"; AND "XYZ :
CORPORATION" (the latter three names being :
fictitious but intending to designate tenants :
residing at or persons having an interest in the :
premises described in the Complaint herein), :
:
Defendants. :
:
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STATE of Maryland)
) ss.:
CITY of Baltimore)

Heather Deans Foley, being duly sworn, deposes and says:

1. I am an attorney admitted to practice pro hac vice before this Court and am counsel at the law firm Venable LLP, attorneys for the above-captioned Plaintiff Wells Fargo

Bank, N.A., as Trustee for the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2005-C2, acting by and through its Special Servicer CWCapital Asset Management LLC ("Plaintiff"), and am familiar with all the facts and circumstances in this action.

2. I make this affidavit pursuant to Rule 55.2(b) of the Local Civil Rules for the Southern District of New York, in support of plaintiff's application for a judgment by default against defendants (a) Sell-Mar Enterprise Inc.; (b) Gotham Lighting Supply; (c) A-Val Architectural Metal III LLC; (d) State of New York Department of Taxation and Finance; (e) New York City Department of Finance; (f) The New York City Criminal Court; (g) New York City Environmental Control Board; and (h) New York City Water Board. The foregoing defendants are collectively referred to herein as the "Defaulting Defendants".

3. This is an action for foreclosure of a leasehold mortgage, which seeks, among other things, entry of a judgment of foreclosure in favor of the Plaintiff and judgment that the defendants, including the Defaulting Defendants, be barred and foreclosed of and from all estate, right, title, interest, claim, lien and equity of redemption of, in and to the Property and each and every part and parcel thereof.

4. This action was commenced on November 22, 2016 by the filing of the Complaint for Foreclosure of a Leasehold Mortgage (the "Complaint"), [Docket No. 1]. A copy of the Complaint is attached hereto as **Exhibit 1**. The summons were issued on November 23, 2016. [Docket No. 5].

5. A copy of the summons and complaint was served on defendant 390 Park Avenue Associates, LLC ("390 Park") on December 13, 2016 by personal service on Katherine Carpenter, and proof of service was filed on December 22, 2016 [Docket No. 7]. 390 Park filed

an Amended Answer and Affirmative Defenses and Counterclaims to the Complaint for Foreclosure of a Leasehold Mortgage on July 28, 2017 [Docket No. 61].

6. A copy of the summons and complaint was served on defendant A-Val Architectural Metal III LLC ("A-Val") on December 16, 2016 by service accepted by the Secretary of State, and proof of service was filed on December 22, 2016 [Docket No. 11]. A copy of the affidavit of service for A-Val is attached hereto as **Exhibit 2**. A-Val has not answered the Complaint and the time for the A-Val to answer the Complaint has expired.

7. A copy of the summons and complaint was served on defendant New York City Environmental Control Board (the "Environmental Control Board") on December 13, 2016 by personal service on Betty Mazyck, and proof of service was filed on December 22, 2016, [Docket No. 12]. A copy of the affidavit of service for the Environmental Control Board is attached hereto as **Exhibit 3**. The Environmental Control Board has not answered the Complaint and the time for the Environmental Control Board to answer the Complaint has expired.

8. A copy of the summons and complaint was served on defendant New York City Criminal Court (the "Criminal Court") on December 13, 2016 by personal service on Nona Riley, and proof of service was filed on December 22, 2016, [Docket No. 13]. A copy of the affidavit of service for the Criminal Court is attached hereto as **Exhibit 4**. The Criminal Court has not answered the Complaint, and the time for the Criminal Court to answer the Complaint has expired.

9. A copy of the summons and complaint was served on defendant New York City Department of Finance (the "Department of Finance") on December 13, 2016 by personal service on Errico Madaleni, and proof of service was filed on December 22, 2016, [Docket No. 14]. A copy of the affidavit of service for the Department of Finance is attached hereto as

Exhibit 5. The Department of Finance has not answered the Complaint, and the time for the Department of Finance to answer the Complaint has expired.

10. A copy of the summons and complaint was served on defendant State of New York Department of Taxation and Finance (the “Department of Taxation”) on December 15, 2016 by personal service on Michelle Welch, and proof of service was filed on December 22, 2016. [Docket No. 15]. A copy of the affidavit of service for the Department of Taxation is attached hereto as **Exhibit 6**. The Department of Taxation has not answered the Complaint, and the time for the Department of Taxation to answer the Complaint has expired.

11. A copy of the summons and complaint was served on defendant New York City Water Board (the “Water Board”) on December 22, 2016 by personal service on Betty Mazyck, and proof of service was filed on December 29, 2016, [Docket No. 23]. A copy of the affidavit of service for the Water Board is attached hereto as **Exhibit 7**. The Water Board has not answered the Complaint, and the time for the Water Board to answer the Complaint has expired.

12. A copy of the summons and complaint was served on defendant Sell-Mar Enterprise Inc. (“Sell-Mar”) on December 14, 2016 by personal service on Justin Laporte, and proof of service was filed on December 29, 2016, [Docket No. 24]. A copy of the affidavit of service for Sell-Mar is attached hereto as **Exhibit 8**. Sell-Mar has not answered the Complaint, and the time for Sell-Mar to answer the Complaint has expired.

13. A copy of the summons and complaint was served on defendant Gotham Lighting Supply (“Gotham”) on December 15, 2016 by personal service on Todd Bazlen, and proof of service was filed on December 29, 2016, [Docket No. 25]. A copy of the affidavit of service for Gotham is attached hereto as **Exhibit 9**. Gotham has not answered the complaint, and the time for Gotham to answer the complaint has expired.

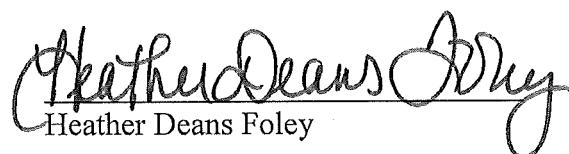
14. On January 3, 2018, the Clerk of the United States District Court for the Southern District of New York (the “Clerk”) entered the Clerk’s Certificate of Default, [Docket No. 121], in which the Clerk, among other things, certified that the Defaulting Defendants have not filed an answer or otherwise moved with respect to the Complaint and noted the default of the Defaulting Defendants. A copy of the Clerk’s Certificate of Default is attached hereto as **Exhibit 10**.

15. Plaintiff and Defendant 390 Park Avenue Associates, LLC (“390 Park”) have cross-motions for summary judgment pending before the Court, which were fully briefed on April 30, 2018 [Docket Nos. 130-134, 136-145, 149 and 150].

16. A copy of the proposed order of default judgment is attached hereto as **Exhibit 11**.

I declare under the penalties of perjury that the foregoing is true and correct.

Dated: May 30, 2018.


Heather Deans Foley